

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TAMMY KITZMILLER; BRYAN AND
CHRISTY REHM; DEBORAH
FENIMORE AND JOEL LIEB; STEVEN
STOUGH; BETH EVELAND; CYNTHIA
SNEATH; JULIE SMITH; AND ARALENE
("BARRIE") D. AND FREDERICK B.
CALLAHAN,

Plaintiffs,

v.

DOVER AREA SCHOOL DISTRICT;
DOVER AREA SCHOOL DISTRICT
BOARD OF DIRECTORS,

Defendants.

Civil Action No. 04-CV-2688

Honorable John E. Jones III

Joint Stipulations of Fact

JOINT STIPULATIONS OF FACT

1. The Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over plaintiffs' causes of action arising under the First and Fourteenth Amendments to the Constitution of the United States, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The

Court has supplemental jurisdiction over plaintiffs' causes of action arising under the Constitution of the Commonwealth of Pennsylvania pursuant to 28 U.S.C. § 1367.

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because one or more defendants resides in this District, all defendants reside in the Commonwealth of Pennsylvania and the events or omissions giving rise to the claims at issue occurred in this District.

3. Defendant Dover Area School District is a municipal corporation with a board of directors, which is defendant Dover Area School District Board of Directors. The Dover Area School District is comprised of Dover Township, Washington Township, and Dover Borough, all in York County, Pennsylvania. There are approximately 3,700 students in the School District, with approximately 1,000 attending Dover High School.

4. On October 18, 2004, the board approved an amendment to the Dover High School biology curriculum by a vote of 6-3. Board members voting for the amendment were Alan Bonsell, Sheila Harkins, William Buckingham, Heather Geesey, Jane Cleaver, and Angie Yingling. Board members voting against the amendment were Noel Weinrich, Carol (Casey) Brown, and Jeff Brown. The biology curriculum was revised as reflected in Plaintiffs' Exhibit 1, attached hereto.

5. All board meetings from 2003-2005 occurred on the dates reflected in the board minutes.

6. All votes on biology curriculum and the biology textbook during the years 2003-05 are correctly portrayed in the board minutes.

7. On November 19, 2004, the district issued the press release (Exhibit 2), attached hereto.

8. On January 18, 2005, administrators for the School District made the statement to 9th grade biology students set forth in Exhibit 3, attached hereto.

9. In June, 2005, administrators for the School District made the statement to 9th grade biology students set forth in Exhibit 4, attached hereto.

10. The Dover Area School District does not require the reading of similar statements to those set forth in Exhibits 3 and 4 for any other aspect of the science curriculum.

11. On April 23, 2005, at the request of the school board, Michael Behe made a presentation on intelligent design to Dover citizens.

12. The April 1, 2003 memo authored by Trudy Peterman was received by Superintendent Richard Nilsen and Assistant Superintendent Michael Baksa.

13. Neither party will challenge the admissibility of any expert's testimony on the grounds that the expert is not qualified to testify on the subject matter described in the expert's report, except defendants reserve the right to challenge the admissibility of plaintiffs' expert Dr. Barbara Forrest on this basis. This stipulation will not in any way preclude the parties from arguing qualifications, credentials, experience or expertise as it relates to the weight to be accorded to any expert's testimony.

14. DASD is required to comply with the Pennsylvania Academic Standards issued by the Pennsylvania Department of Education. A copy of the Standards are attached hereto as Exhibit 5.


15. The textbook chosen by the DASD Board of Directors for use in the DASD ninth-grade biology class is the Prentice Hall book *Biology* by Dr. Kenneth Miller and Dr. Joseph Levine.

16. In section entitled "Strengths and Weaknesses of Evolutionary Theory," the authors of *Biology*, on page 386, write: "Like any scientific theory, evolutionary theory continues to change as new data are gathered and new ways of thinking arise. As you will see shortly, researchers still debate such important questions as precisely how new species arise and why species become extinct. There is also uncertainty about how life began."

17. On page 15 of *Biology*, the authors also state: "A useful theory may become the dominant view among the majority of scientists, but no theory is considered absolute truth. Scientists analyze, review, critique the strengths and weaknesses of theories. As new evidence is uncovered, a theory may be revised or replaced by a more useful explanation. Sometimes scientists resist a way of looking at nature, but over time new evidence determines which ideas survive and which are replaced. Thus, science is characterized by both continuity and change.

Dated: September 6, 2005

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2005, a copy of the foregoing Joint Stipulation of Facts was served on the following counsel through the court's electronic case filing system:

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